IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No.....

LESTER H. BARNHART, CLINTON R. SMITH, GEORGE W. YONTZ, CHARLES S. LAKE, JAMES F. FUNK, WILLIAM J. GARVER, AND BURL R. PHARES, CONSTITUTING A COMMITTEE REPRESENTING AND ACTING FOR FEDERATED SHOP CRAFT EMPLOYES, MAINTENANCE OF WAY EMPLOYES, AND SIGNALMAN EMPLOYES, OF THE WESTERN MARYLAND RAILWAY COMPANY AND AUTHORIZED AND DIRECTED BY SAID EMPLOYES OF SAID RAILWAY COMPANY TO INSTITUTE THIS SUIT, *Petitioners,*

against

WESTERN MARYLAND RAILWAY COMPANY,
A BODY CORPORATE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW.

The Opinion of the United States Circuit Court of Appeals for the Fourth Circuit has been reported in 128 Federal Reporter, Second Series, at pages 709 to 716, August

10, 1942. The Opinion of that Court was filed by it on June 11, 1942, and is in the Record beginning at page 47. The Opinion of U. S. District Court for Maryland was filed November 19, 1941, and is in the Record at pages 30 to 42.

II.

JURISDICTION.

Petitioners seek a review by Certiorari pursuant to Judicial Code, Section 240 (a), as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 (U. S. C., Tit. 28, Sec. 347 (a)). The date of the decision sought to be reviewed is June 11, 1942 (R. 59). It was entered by the United States Circuit Court of Appeals for the Fourth Circuit affirming a Judgment and Decree in said case rendered and entered by the United States District Court for the District of Maryland, November 28, 1941, at Baltimore, Maryland.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under heading A, supplemented under heading C, in the Petition for the Writ of Certiorari, and, for brevity, said statement and supplement are not repeated here.

IV.

STATUTE INVOLVED.

The Act of Congress, designated The United States Transportation Act of 1920, approved February 28, 1920. (45 U. S. C. A., ss. 131-146).

V.

SPECIFICATION OF ERRORS.

(1) The Circuit Court of Appeals erred in deciding that the Bill of Complaint and the Exhibit fail to show jurisdiction in the United States District Court.

(2) The Circuit Court of Appeals erred in deciding that the action or suit set forth in the Bill of Complaint was barred by laches.

(3) The Circuit Court of Appeals erred in holding and deciding that the said suit or action was one to *enforce a decision* of the United States Labor Board under said Transportation Act of 1920.

(4) The Circuit Court of Appeals erred in holding and deciding that the *repeal* in 1926 of said Transportation Act of 1920 precluded and destroyed the rights of the Plaintiffs and Appellants, Petitioners here, derived from that Act, as a basis of and for Federal jurisdiction.

(5) The Court of Appeals erred in failing to hold that the fact that the decisions of the Labor Board were not enforceable by process is wholly apart from and does not affect the valid and binding operation of the Transportation Act of 1920 itself in defining and ascertaining the respective duties of interstate carriers and their employes, and of contracts actually entered into and put into operation by such carriers with their employes, pursuant and obediently to the directions, provisions, and purposes of the Act.

(6) The Court of Appeals erred in maintaining, by its Opinion and Judgment, the legality of, and immunity from responsibility for, the abrogation by the defendant Company of a Federal Statute and of contracts prescribed by,

and entered into under, said Federal Statute, the Transportation Act of 1920, for the protection of the public interests involved in interstate commerce.

VI.

ARGUMENT.

POINT I.

THE DISTRICT COURT DID NOT LACK JURISDICTION OF THE SUIT. ON THE CONTRARY, THAT COURT, UPON THE ALLEGATIONS OF THE BILL OF COMPLAINT, HAD JURISDICTION BY VIRTUE OF ARTICLE I, SECTION 8, OF THE U. S. CONSTITUTION, EMPOWERING CONGRESS TO REGULATE COMMERCE AMONG THE SEVERAL STATES, AND THE TRANSPORTATION ACT OF 1920 ENACTED IN THE EXECUTION OF THAT POWER, AND THE CONTRACTS AND AGREEMENTS, EXECUTED AND PUT IN OPERATION PURSUANT TO THAT ACT, BETWEEN THE COMPANY AND ITS EMPLOYES, AND BY THE ALLEGATIONS IN THE BILL OF THE DEFENDANT RAILWAY'S WRONGFUL VIOLATIONS, CONTINUED WITHOUT INTERMISSION, OF SAID ACT OF CONGRESS AND SAID CONTRACTS, AND ITS REPUDIATION, AS A CLAIMED RIGHT UPON ITS PART, OF SAID ACT AND CONTRACTS, IN DENIAL AND DEPRIVATION OF THE PROPERTY AND PERSONAL RIGHTS SECURED TO THE PLAINTIFF EMPLOYES BY VIRTUE OF SAID ACT AND CONTRACTS.

This subject has been amply discussed, and the authorities referred to, in Paragraph 1 of the Division of the Petition for Certiorari under the caption REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT, pages 11-23, which for brevity is not repeated here. *See the Authorities there collated.*

To that discussion it may here appropriately be added that the Transportation Act of 1920, which, as explicitly shown in the Bill of Complaint and the Exhibit, the defendant carrier claimed it could rightfully and lawfully repudiate and nullify, certainly did not contemplate that the contracts it prescribed for the maintenance and protection of

interstate commerce, and, as the Supreme Court declared, "in the highest public interest", should be annulled as mere "scraps of paper" by the carrier who had entered into them. Any such right upon the part of the carrier would be not only an evasion, but the destruction, of the Statute. The assertion of such a right, and persistence therein, are tantamount to an absolute claim, upon the carrier's part, that the Act itself authorized such conduct. *That is the cardinal and clear-cut issue presented by the Bill of Complaint.* The carrier claimed, and acted accordingly, that the Act was ineffective and nugatory. The Appellants, the Employes, maintained that the Act was validly operative upon themselves and their interstate employer, and that when the latter entered into a contract with them, pursuant to the Act, and effectuated it by actual operation, the rights of the employes originating in and derived from the Act were protected and secured by both the Act and the contract until terminated according to the provisions of both.

The point is impressively illustrated by what actually happened. The Act and contract springing from it established certain relations between the interstate carrier and its employes. As long as the *employes remained such*, the carrier was bound by the Act, because the Act operated upon both the employes and the carrier employer. As the Bill of Complaint and the Exhibit show, the carrier realized that condition, and, in order to escape its obligations under the Act and under the contract it had made by virtue of the Act, it improvised the expedient of making the employes not *its* employes, but the employes of contractors not under and not within or affected by the Act. The defendant company did this by *just that subterfuge* in evasion and violation of the Statute and of the contracts thereunder which it had made and was carrying into effect with its employes. This subterfuge is set out in detail in

the Bill and Exhibit. It was done, necessarily, under a *claim of right to do so,* that is to say, a claim that the Statute, in its construction and effect, did not prevent such action, but, on the contrary, authorized its own repudiation and annulment in that manner. *Then and there arose the question whether the Statute was to be construed and disposed of in accordance with the carrier's said claim as to its nature, meaning and effect. That was the question* considered by the Labor Board, in the case between the employes and the carrier in the summer of 1922, and in its opinion of November 13, 1922, wherein the contentions of both parties are stated and discussed. Although the *Decision* of the Board was not enforceable by process, it distinctly defined and illustrated the controversy as a claim upon the carrier's part that it could proceed with respect to the Act as it did, and so lawfully exempt itself and its employes from the Act.

In *Hoey v. New Orleans, etc. R. Co.,* 105 So. 310, 311-312, and 159 La. 258, 263-264, the Supreme Court of Louisiana, after holding, under the Supreme Court Decision in *Pa. R. Co. v. U. S. Labor Board,* 261 U. S. 72, that the decisions of the U. S. Railroad Labor Board under the Act of 1920 were not enforceable by process, expressly decided that where the defendant railroad *elected to accept* a decision of the Railroad Labor Board, and reinstate a discharged employe and pay him for time lost, the decision and contract so accepted became valid and effective and the employe was entitled to recover such amount as he could show was due him under the contract. The Court quoted the statement of Mr. Chief Justice Taft, in the case in 261 U. S. 72, that, "The Board is to act as a Board of Arbitration." And the Court continued:

> "The defendant Company had the right to reject or accept the award of the Labor Board. It elected to

accept it. In doing so, it was obviously aware of the pecuniary and other material benefits it could secure from such action. The publication of the Board's decision and defendant's refusal to abide thereby were forestalled by its notification to the plaintiff of its acquiescence therein. The good will of the public was retained, with the consequent retention, and possible increase, of its business and earnings. Its rejection of the decision would have had the opposite effect. The public would have looked upon the railroad Company as a corporation willing to incur and encourage disputes with its employes, rather than as one desirous of cooperating with them in the interest of the public business. Having the ill will of the public, defendant's business would decrease, and its receipts, and consequent earnings, would necessarily diminish. On the other hand, the plaintiff was, by the defendant's notification of its desire to comply with the Board's decision, misled, to his detriment, to forego the immediate exercise of his *legal right* to require the publication by the Labor Board of its decision and the failure of the defendant Company to comply therewith. In these circumstances, we think the defendant company has ratified and acquiesced in, and is *equitably* estopped from contesting, the award of the Board."

See also:

Rhodes v. New Orleans, etc., R. Co., 129 Miss. 78, 94-96; 91 So. 281, 283-284.

Point II.

THE REPEAL OF THE FEDERAL ACT OF 1920 DID NOT DESTROY OR DIVEST THE PERSONAL AND PROPERTY RIGHTS OF THE PLAINTIFF EMPLOYES CREATED AND EXISTING BY VIRTUE OF AND IN ACCORDANCE WITH THE PROVISIONS OF THE REPEALED STATUTE. SUCH VALID AND VESTED RIGHTS COULD NOT BE CONSTITUTIONALLY OR LEGALLY DESTROYED BY SUCH REPEAL, BUT COULD BE TERMINATED ONLY IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACTS WHEREBY THEY WERE LEGALLY CREATED BY VIRTUE OF AND PURSUANT TO THE SAID ACT OF CONGRESS. SO THAT THE PERSONAL AND PROPERTY RIGHTS OF THE EMPLOYES HEREIN INVOLVED ARE AS FULLY AND DIRECTLY REFERABLE NOW TO THE CONTRACTS WHICH CREATED THEM AND THE ACT OF 1920 WHICH AUTHORIZED AND PROVIDED FOR THEM AS THEY WERE WHEN THEY ORIGINALLY CAME INTO EXISTENCE UNDER AND BY VIRTUE OF THE ACT OF 1920.

A pervading Error of the learned Court below, in its denial of its jurisdiction of the case made by the Bill of Complaint, consists in the wholly unwarranted and untenable assumption that the *repeal* of the Federal Act of 1920 *divested and destroyed* the personal and property rights of the Appellants created and subsisting by virtue of that Act.

Repeal of the Transportation Act, it is respectfully submitted, *did not* destroy or divest said rights of the Appellants which lawfully came into existence and became vested by virtue of the provisions of that Federal Statute, and could not, constitutionally, have divested or destroyed said rights.

Peninsula Produce Exchange v. N. Y. P. and N. R. Co., 152 Md. 594; 595; 596. (Note citation of Federal Authorities in this case).

Jevons v. Pittman, 126 Md. 650; 653.

Vandiver, Treasurer, v. Fidelity Savings Bank, 120 Md. 619; 624; authorities there cited.

U. S. v. Carolina Frght. Carriers Corp., decided by U. S. Supreme Ct. Mar. 2, 1942, 315 U. S. 475, 486-488; 86 L. Ed. pp. 627, 634-635, Headnotes 7 and 8.

Wood v. Lovett, 313 U. S. 362, 369; 85 L. Ed. 1404, 1407.

Appelby v. N. Y., 271 U. S. 364; 70 L. Ed. 992.

Morgan's La. & Tex. Co. v. Cocke, 273 U. S. 656 (cited 152 Md. 596) and Authorities there cited.

Danzer Co. v. Gulf, etc., R. Co., 268 U. S. 633 (cited 152 Md. 596) and Authorities on page 637.

Phillips v. Grand Truck Ry. Co., 236 U. S. 662; 667 (cited 152 Md. 569).

Consolidated Edison Co. & I. B. E. W. v. National Labor Relations Board, 305 U. S. 197; 83 L. Ed. 143, 144, 145.

Houston & Tr. Co. v. Texas, 147 U. S. 243, 261; 42 L. Ed. 1023, 1029.

Noble v. Union River, etc., R. Co., 147 U. S. 165, 176; 37 L. Ed. 123, 127.

Reese v. Watertown, 19 Wallace 120-124; 22 L. Ed. 72, 76-77.

Hoffman v. Quincy, 4 Wallace 535; 19 L. Ed. 403.

Union Pacific R. Co. v. U. S. (sinking fund cases), 99 U. S. 718; 25 L. Ed. 501.

Hepburn v. Griswold, 8 Wallace 603, 624; 19 L. Ed. 513, 526.

Wolff Packing Co. v. Ct. of Ind. Rel., 267 U. S. 552, 563, 566, 569; 69 L. Ed. 785.

Int. Comm. Comm. v. Louisville & N. R. Co., 227 U. S. 88, 91.

Morgan v. U. S., 298 U. S. 468; 304 U. S. 1.

Green v. Biddle, 8 Wheaton 1; 5 L. Ed. 547.

La., ex rel. Ranger v. New Orleans, 102 U. S. 203; 26 L. Ed. 132.

La., ex rel. Nelson v. St. Martin's Parish, 111 U. S. 716; 28 L. Ed. 574.

These decisions, it is respectfully submitted, demonstrate the error of the assumption that *there is not involved in this litigation any Act of Congress because the Transportation Act has long since been repealed and new legislation has been enacted covering the subject.*

The authoritative Treatises accord with the Judicial Decisions above cited to the effect that the repeal of a statute does not and cannot destroy or divest valuable rights created, vested and existing under and pursuant to such statute.

> *Cooley's Constitutional Limitations*, 8th ed., Vol. 2, pp. 744-745.
> *Lewis' Sutherland Statutory Construction*, Sec. 646; 641, *et seq.*
> 59 *Corpus Juris, Statutes*, Sec. 696, p. 1171.
> 12 *Corpus Juris, Constitutional Law*, Sec. 781, p. 1086; and see particularly Sec. 487, p. 957.

> "The fifth amendment to the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law, secures the individual against any action of the Federal Government divesting vested rights."
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> 12 *Corpus Juris, Constitutional Law*, Sec. 487, p. 957.

Point III.

THE ACTION HEREIN IS NOT A SUIT TO ENFORCE A DECISION OF THE UNITED STATES LABOR BOARD UNDER THE TRANSPORTATION ACT, BUT IS A SUIT DIFFERING, RADICALLY AND THROUGHOUT, FROM A PROCEEDING TO ENFORCE ANY SUCH DECISION; AND THE DECISION OF THE LABOR BOARD, WHICH THE DISTRICT COURT ERRONEOUSLY SUPPOSED IT WAS ASKED TO ENFORCE, IS REFERRED TO AND DETAILED IN THE BILL AND THE EXHIBIT FOR THE SOLE, BUT HIGHLY MATERIAL, PURPOSE OF SHOWING THE FACTS ATTENDING AND CHARACTERIZING THE RAILWAY COMPANY'S REPUDIATION OF THE TRANSPORTATION ACT, ITS CONTRACT WITH ITS EMPLOYES UNDER THAT ACT, THE DISINGENUOUS CHARACTER OF ITS EVASION AND VIOLATION OF THE FEDERAL LAW AND ITS CONTRACTS THEREUNDER, THE SUBTERFUGES WHEREBY IT ACCOMPLISHED THOSE ENDS, AND ITS POSITION AND CONTENTIONS PURPORTING TO JUSTIFY ITS WRONGFUL VIOLATIONS OF THE FEDERAL LAW AND OF THE CONTRACTUAL DUTIES WHICH, AS AN INTERSTATE CARRIER, THE DEFENDANT ASSUMED UNDER IT.

The learned Court below, in denying jurisdiction, held that the action was one to *enforce a decision* of the United States Labor Board. This, it is respectfully submitted, was an entirely erroneous supposition as to the object and prayers of the Bill. Such purpose and prayers, plainly manifested by the Bill from beginning to end, were to hold the defendant interstate carrier lawfully and equitably accountable to its employes for its unconscientious and illegal abrogation and denial of their contractual rights of person and property created by and growing out of valid contracts entered into with them by the defendant carrier in compliance with the mandate of the Act of Congress of 1920, known as the "Transportation Act", that "*It shall be the duty* of all carriers, their officers and employes to *exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier* growing out of any dispute between the carrier and the employes thereof."

Further, with respect to this subject, it is respectfully submitted on behalf of the Petitioners that the circumstance that the Decision of the Labor Board may not be enforced by court decree or process has no relation to or effect upon the purposes, and the prayers for relief, set forth in the Bill of Complaint, which are based upon the valid operation of the Transportation Act in prescribing the duties of and relations between interstate carriers and their Employes, and embodied in the Contracts entered into and put in operation by such carriers and their employes pursuant to the provisions and purposes of the Act.

Finally, upon this point, the Decisions of the Supreme Court of the United States in the *Pennsylvania Railroad Cases,* reported in 261 U. S. 72 and in 267 U. S. 203, holding that the *decisions* of the Railroad Labor Board, rendered in controversies and cases adjudged and determined by it, were not enforceable by the process of the Courts, did not hold, and the Supreme Court has never held, that *Contracts* entered into, and carried into operation, by interstate carriers and their employes, in obedience to the Transportation Act, were not enforceable. To hold that decisions by the Labor Board of controversies submitted to it are not enforceable in the Courts is a totally different thing from holding that Contracts actually made and given operation by the parties to them, under and by virtue of the *federal Act,* are not enforceable in the federal Courts.

As appears on page 213 of the Report of the Case in 267 U. S., *all* the Court held in both cases, namely, in the first case in 261 U. S. 72, as well as in the second case, 267 U. S. 203, was:

> "It is evident from a review of title III of the Transportation Act of 1920 that *Congress deems it of the highest public interest* to prevent the interruption of

interstate commerce by labor disputes and strikes, and that its plan is to encourage settlement without strikes, first, by conference between the parties; failing that by reference to adjustment boards of the parties' own choosing, and if this is ineffective, by a full hearing before a national board appointed by the President, upon which are an equal number of representatives of the carrier group, the labor group, and the public. *The decisions of the Labor Board are not to be enforced by process.* The only sanction of *its decision* is to be the force of public opinion invoked by the fairness of a full hearing, *the intrinsic justice of the conclusion, strengthened by the official prestige of the board, and the full publication of the violation of such decision by any party to the proceeding.* The evident thought of Congress in these provisions is that the *economic interest of every member of the public in the undisturbed flow of interstate commerce, and the acute inconvenience to which all must be subjected by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all the circumstances of the controversy, and arouses public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it.*"

Point IV.

THE QUESTION WHETHER OR NOT THE EQUITABLE DOCTRINE OF LACHES SHOULD BE APPLIED IS, IT IS RESPECTFULLY SUBMITTED, DECISIVELY ANSWERED IN THE NEGATIVE BY THE ALLEGATIONS OF THE BILL AND THE SETTLED AND FAMILIAR PRINCIPLES THAT LACHES MAY NOT BE AVAILED OF BY DEFENDANTS WHO ARE CULPABLE, AS THE BILL HEREIN CHARGES, OF ILLEGAL, UNCONSCIONABLE AND UNMORAL CONDUCT, WHEREBY THEY HAVE DEPRIVED A PLAINTIFF OF HIS RIGHTS AND IMPOSED UPON HIM CONTINUING DEPRIVATIONS, INJURIES AND LOSSES, AND ACTED IN A MANNER OBNOXIOUS TO ETHICAL AND EQUITABLE PRINCIPLES. UPON THAT FIRMLY SETTLED PRINCIPLE, THE ADMITTED CASE MADE BY THE BILL WITH RESPECT TO THE MISCONDUCT OF THE DEFENDANT PRECLUDES IT FROM AVAILING OF THE EQUITABLE BAR OF LACHES.

In view of the censurable and inequitable conduct of the Defendant, alleged in the Bill and Exhibit and admitted upon the Motion to Dismiss, whereby the wrongs and injuries complained of were inflicted upon the Plaintiffs, the equitable defense of laches will not be permitted to the wrongdoer guilty of such conduct.

In *Judge Phelps' Juridical Equity*, Sec. 262, Laches, at pp. 355-356, it is said:

> "Laches may be called the typical equitable doctrine, for several reasons. In the first place, there is nothing arbitrary or technical in its rules, which *rest upon the plainest principles of substantial justice and public policy.* Again, these rules are all subject to the sound discretion of the court, *to be freely exercised in view of the special circumstances of each case, or, in other words, every case, as to laches, is governed chiefly by its own circumstances.* And, lastly, it runs through *the whole system* to such an extent that to cite its applications would be to enumerate nearly all the enabling doctrines of equity."

In *Story's Equity Jurisprudence,* Vol. 3, Sec. 1974, 14th ed., it is stated that Courts of Equity "also interfere in many cases to *prevent the bar of the Statutes (of Limitations) where it would be inequitable or unjust.* Thus for example if a party has perpetrated a fraud which has not been discovered until the statutable bar may apply to it at law, *Courts of Equity will interpose and remove the bar out of the way of the other injured party.* A FORTIORI THEY WILL NOT ALLOW SUCH A BAR *to prevail, by mere analogy, in suits in equity,* WHERE IT WOULD BE IN FURTHERANCE OF A MANIFEST INJUSTICE".

In support of this doctrine, the elaborate exposition of it by Lord Redesdale in the case of *Bond v. Hopkins,* 1 Sch. & Lefr. 430-435, is cited in an extensive note.

Where there is continuing wrong or fraud or unconscionable conduct upon the part of the defendant, "the Court will look with much indulgence upon the circumstances tending to excuse the Plaintiff from a prompt assertion of his rights."

Bispham's Principles of Equity, Sec. 203, p. 345
citing:
Saxlehner v. Eisner & Mendelson Co., 179 U. S. 39.
McIntire v. Pryor, 173 U. S. 38.
McLean v. Fleming, 96 U. S. 245.
Menendez v. Holt, 128 U. S. 514.

In 21 *Corpus Juris, Equity,* Section 223, pp. 229-230, it is said:

> "Nor does mere submission to an injury necessarily constitute acquiescence, where the wrong is continuing in its nature, at all events if there is an element of fraud in the case; *it is not for a wrongdoer to impose extreme vigilence and promptitude as conditions to the exercise of the right of the person injured.* * * *

The law does not demand the utmost exertion of diligence in repelling a hostile invasion of one's rights deliberately undertaken with full knowledge of all the facts."

In the same Work, same Title, Section 230, p. 237, it is also said:

"Lapse of time will not bar relief where circumstances exist which excuse the delay and *render it inequitable to interpose the bar.* There is no obsolute rule as to what constitutes an excuse for an apparently unreasonable delay. *It depends on the circumstances of the particular case and rests in the sound discretion of the Chancellor."*

In *Michoud v. Girod,* 4 Howard 503; 11 L. Ed. 1077, at p. 1102, the Supreme Court, in that elaborately considered case, referring to the equitable doctrine of laches, said:

"There is no rule in equity which excludes the consideration of circumstances, and, in a case of actual fraud, we believe *no case* can be found in the books in which a court of equity has refused *to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."*

A Court of Equity applies the rule of laches according to its own ideas of right and justice, every case being governed by its own circumstances.

Brown v. Buena Vista Co., 95 U. S. 157; 24 L. Ed. 422.
Patterson v. Hewitt, 195 U. S. 309; 49 L. Ed. 214.

Equity will *refuse* to adopt a rule of limitations *where injustice would result.*

Rhode Island v. Massachusetts, 15 Peters 233; 10 L. Ed. 721.

And see the Opinion of the late Mr. Justice Van Devanter, as Circuit Judge, in *Stevens v. Grand Cent. Mining Co.*, 133 Fed. 32; and particularly page 33.

A suit begun in 1914, *to enforce provisions of the Sherman Anti-Trust Act of 1890, against unlawful control by the Southern Pacific Company* of the Central Pacific system, acquired in 1899, is not barred because not begun earlier, even if delay could bar the Government in such a case.

U. S. v. So. P. Co., 259 U. S. 214; 66 L. Ed. 907.

The equitable doctrine of laches cannot be invoked to bar rights of Indians in lands purchased in violation of the provisions of U. S. Rev. Stat. Sec. 2078, that no person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for and on account of the United States.

Ewert v. Bluejacket, 259 U. S. 129; 66 L. Ed. 858.

See also the same principle applied in favor of Homestead Claimants under Act of February 8, 1887, 24 Stat. at L. 391, ch. 120.

U. S. v. New Orleans P. R. Co., 248 U. S. 507; 63 L. Ed. 388.

And see

Hirons v. Hubbell, 149 Md. 593; 607.
10 Rul. Case Law, 404, sec. 151.

POINT V.

Inasmuch as the Circuit Court of Appeals did not sustain the objections, made by the Defendant in its Motion to Dismiss the Bill of Complaint, of unenforceability, non-mutuality, etc. of the Contracts entered into by the defendant Company and the plaintiff Employes, this Brief will not be prolonged by discussion of that subject.

CONCLUSION.

The Bill of Complaint and the Exhibit filed with it show that the plaintiff Employes, the Petitioners here, have been most seriously wronged and injured by the defendant Carrier in violation of its "legal and moral" obligations to them, and that such wrongs and injuries were perpetrated by the Defendant by its repudiation of a Federal Statute under a claim of right upon its part, and it is respectfully submitted that those wrongs, and the Bill for their redress, call upon the Defendant to answer the complaint and charges of upwards of one thousand of its employes against it.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this honorable Court of its supervisory powers, and that to such end a Writ of Certiorari should be granted and this honorable Court should review the judgment of the Circuit Court of Appeals for the Fourth Circuit and reverse it.

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